

### **REMARKS/ARGUMENTS**

Seventeen (17) claims (Claims 1 and 3-18) remain pending in this application through this Amendment. Claim 2 has been cancelled, claims 19-21 have been withdrawn from consideration, and claims 1, 3, and 4 have been amended herein. No new matter has been introduced into the application. As explained in more detail below, Applicants submit that all claims are in condition for allowance and respectfully request such action.

#### **Restriction Requirement**

In the Office Action mailed September 8, 2004, claims 1-21 were deemed to be subject to a restriction/election. More specifically, restriction was required for Group I, (Claims 1-18); and Group II, (Claims 19-21).

By this Response and Amendment, Applicants hereby elect Group I (Claims 1-18) without traverse. The Applicants' election is without prejudice or admission with respect to the Applicants' right to re-file the withdrawn claims in a divisional application. Applicants also submit that the election of Group I does not require amending the title or the inventorship of the present application.

#### **Rejection of Claims 6-11 under 35 USC §112, second paragraph**

Claims 6-11 were rejected under 35 U.S.C. §112, second paragraph as failing to particularly point out and distinctly claim the invention. More specifically, the Examiner objected to the term "line of movement" as indefinite for failing to specify a direction such as, for example, parallel to the chute longitudinal orientation. Applicant respectfully disagrees with the Examiner. One skilled in the art reading the claims in light of the specification would recognize the rope section can have a line of movement in almost any orientation in relation to the chute so long as the loop former may initially extend past the rope section and engage it upon

retraction. In light of this, applicants respectfully request reconsideration and withdrawal of this rejection.

**Rejection of Claims 1-15, and 18 under 35 USC §102(e) – Ailey**

Claims 1-15 and 18 stand rejected under 35 USC §102(e) as allegedly anticipated by U.S. Patent No. 6,729,102 to *Ailey*. The Examiner, however, indicated that if any invention disclosed but not claimed in the *Ailey* reference was derived from the inventors of the present application, and therefore not an invention by “another,” applicants should make this clear. In response, the Applicants respectfully submit a Rule 132 Declaration of the inventors, Dennis J. May and Samuel D. Griggs, wherein the inventors state that any invention disclosed but not claimed in the *Ailey* reference was derived from the inventors of the present application, and therefore not an invention by “another.” Based on the Rule 132 Declaration, Applicants respectfully submit that the *Ailey* reference cannot be used against the pending application and request reconsideration and withdrawal of this rejection.

**Rejection of Claim 1 under 35 USC §102(b) – Evans**

Claim 1 stands rejected under 35 USC §102(b) as allegedly anticipated by U.S. Patent No. 4,675,945 to *Evans*. A rejection under §102 requires that each and every limitation of the claimed invention be disclosed in a single prior art reference. Through this Response and Amendment, the applicants have amended claim 1 to include “a netting handle former on the base operated to loop the rope section to form a looped handle in the rope section of the netting.” Since *Evans* does not teach or otherwise disclose a netting handle former, claim 1 is not anticipated by *Evans*. Consequently, Applicants respectfully request reconsideration and withdrawal of this rejection.

**Rejection of Claims 2-6, 16 and 17 under 35 USC §103(a) – Ailey**

Claims 2-6, 16 and 17 stand rejected under 35 USC §103(a) as obvious in light of U.S. Patent No. 6,729,102 to *Ailey*. As indicated above, Applicants respectfully submit that the *Ailey* reference does not qualify as prior art as set forth by 35 U.S.C. §103(c).

**Rejection of Claims 2-6, 16 and 17 under 35 USC §103(a) – Evans in view of May**

Claims 2-6, 16 and 17 stand rejected under 35 USC §103(a) as obvious in light of U.S. Patent No. 4,675,945 to *Evans* in view of U.S. Patent No. 5,165,216 to *May*.

In response, the Applicants submit the claimed invention is not obvious over *Evans* in view of *May*. First, the teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). It is respectfully submitted that neither cited reference discloses or suggests the claimed combination. Indeed, the Office Action is silent concerning where these references teach or suggest making the claimed combination.

Secondly, there is no motivation to combine *Evans* with *May*. See MPEP 706.02(j) ("To establish a *prima facie* case of obviousness, three basic criterion must be met. First, there must be some suggestion or motivation ... to modify the reference or to combine reference teachings"). The Examiner states that "[i]t would have been obvious to one of skill in the art to provide the device of *Evans* with a handle forming mechanism as shown by *May* to form handles to carry the packages." However, no motivation to combine *Evans* with *May* was provided in the Office Action nor does the prior art suggest a modification of *Evans* or combination with *May* to arrive at the claimed invention.

Indeed, in this regard, *Evans* is directed to solving an entirely different problem with an entirely different method. Indeed, every embodiment of *Evans* includes a hollow stuffing horn for receiving a shirred sausage casing, which is then filled with ground sausage. Unlike the present invention, *Evans*' sausage stuffing mechanism determines the amount of filler to encase within the final product and is aimed to reduce the amount of stuffing in the tail section, among others (Col. 1, lines 51-53) and neither reference teaches or claims netted handles. Therefore, even when using impermissible hindsight to combine the two references, an entirely different product solving an entirely different problem is created. Therefore, Applicants respectfully traverse this ground for rejection and request reconsideration.

**Rejection of Claims 12-15 under 35 USC §103(a) – *Evans* in view of *Klein***

Claims 12-15 stand rejected under 35 USC §103(a) as obvious in light of US Patent No. 4,675,945 to *Evans* in view of US Patent No. 3,763,621 to *Klein*.

In response, the Applicants respectfully submit the claimed invention is not obvious over *Evans* in view of *Klein*. Combining the machine disclosed in *Evans* with the pivotable guides as taught in *Klein*, does not render obvious claims 12-15, which depend from claim 1. Furthermore, as stated above, the Examiner has not established a prima facie case in showing a motivation to combine. Therefore, the Applicants respectfully traverse this ground for rejection and request reconsideration.

**Rejection of Claims 12-15 under 35 USC §103(a) – *Evans* in view of *Longo***

Claims 12-15 stand rejected under 35 USC §103(a) as obvious in light of U.S. Patent No. 4,675,945 to *Evans* in view of U.S. Patent No. 3,763,621 to *Longo*.

In response, the Applicants respectfully submit the claimed invention is not obvious over Evans in view of Klein. Combining the machine disclosed in *Evans* with the ribs as taught in *Longo*, does not render obvious claims 12-15, which depend on claim 1. Again, as stated above, there has been no demonstration of a prima facie case of obvious in showing a motivation to combine the references. Therefore, the Applicants respectfully traverse this ground for rejection and request reconsideration.

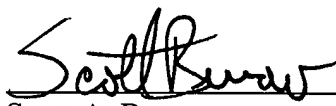
**Conclusion**

The claims as now presented are believed to be in allowable condition. No new matter has been introduced into the application. In light of the above arguments, applicants respectfully request consideration of the application and allowance of all pending claims.

Please feel free to contact the undersigned should any questions arise with respect to this case that may be addressed by telephone.

Respectfully submitted,

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